

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

RICHARD LOWERY,

*Plaintiff,*

v.

LILLIAN MILLS, in her official capacity  
as Dean of the McCombs School of  
Business at the University of Texas at  
Austin; ETHAN BURRIS, in his official  
capacity as Senior Associate Dean for  
Academic Affairs of the McCombs School  
of Business at the University of Texas-  
Austin; and SHERIDAN TITMAN, in his  
official capacity as Finance Department  
Chair for the McCombs School of  
Business at the University of Texas-  
Austin,

*Defendants.*

Case No. 1:23-cv-129-DAE

DECLARATION OF ENDEL KOLDE IN SUPPORT OF  
MOTION TO CORRECT FILING

I, Endel Kolde, declare the following:

1. I am an adult and competent to make this declaration. I am lead counsel for Richard Lowery in this case.

2. On March 28, 2023, I accidentally filed another copy of our MPI reply brief instead of Lowery's Response to Defendants' Motion to Dismiss. Doc. #23. What I

filed was identical to the MPI reply brief I had filed a week earlier. Doc. #17. When I went to upload the PDF file of the response brief, I mistakenly accessed the “MPI Reply” folder in the Lowery folder on my personal computer’s “Desktop” and attached the wrong PDF file.

3. A true and correct copy of the actual response brief that I had intended to file is attached as Exhibit 1. Other than adding the words "Exhibit 1" on the first page, the text of the PDF file remains unchanged since March 28, 2023, the original due date of the brief.

4. I did not immediately notice that I had filed the wrong brief and Defense counsel did not contact me to inquire about why I had filed another copy of our MPI reply brief.

5. On April 4, 2023, Defendants filed their reply brief and in a footnote mentioned that Lowery had re-filed a copy of the MPI reply brief, but did not otherwise notify Plaintiff’s counsel of this error.

6. On April 4, 2023, I was in transit from the Seattle area to Austin for this case and also preparing for a hearing on expedited discovery set before Magistrate Judge Howell on April 5, 2023 (Doc. #28). I flew back to Seattle after the hearing and arrived late on April 5, 2023.

7. Due to the hearing and the associated travel, I did not immediately read Defendants’ reply brief, and I did not read the footnote, set in size 10 font at the bottom of page 2. I do remember being puzzled that Defendants argued we had not responded to their arguments because I knew what I had written and thought I filed.

8. Neither myself, nor anyone else on the Plaintiff's legal team noticed this error until the evening of April 26, 2023, when my co-counsel Stephanie Brown messaged me that in preparing for our response to Defendants' motion to stay discovery she had looked for our response to the motion to dismiss and found only our MPI reply brief.

9. First thing the next morning, on April 27, 2023, I confirmed that I had filed the wrong brief and immediately called defense counsel and left a message, explaining the situation and asking to confer about a motion to correct the filing. I then followed up with an email regarding my intent to file a motion to correct the duplicate filing.

10. A true and correct copy of the email I sent to opposing counsel is attached as Exhibit 2. The electronic version of the email also attached PDF copies of the duplicate MPI reply filing and the correct response brief.

11. As of the time of filing of this motion, I had not received a response from defense counsel on my request to confer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date, April 27, 2023.



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Endel Kolde